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ABSTRACT

One means of providing at least some assurance of more openness in governmental meetings is through enactment of state "Open Meetings" laws. This paper reviews state laws on such meetings. Two questionnaires were sent to gather basic data: one to state legislative reference services and the other to editorial officials on newspapers in the capital cities of the 50 states. Findings showed that of the 47 states with open meetings laws, 22 states provide for open legislatures and 23 open their legislative committees; that the status of these laws in most states is marginal; that extensive action is going on, with 26 states having taken some legislative action in the 1970s; and that journalists, as surrogates for the public, seem sufficiently involved in action for improved legislative support of new or amended open meetings laws. A table summarizes the principal characteristics of state laws. (JM)

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STATE OPEN MEETINGS LAWS: AN OVERVIEW

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STATE OPEN MEETINGS LAWS: AN OVERVIEW

INTRODUCTION

The "Freedom to Attend Governmental Meetings," like all other freedoms, has certain limitations. However, openness appears to be more common today than ever before, even though very few people vigorously support the notion that all meetings of all bodies at all levels of government should be conducted before citizen or media spectators. One method of providing at least some assurance of more openness (when appropriate) is through enactment (and enforcement) of state "Open Meetings" laws.

This paper looks at state laws on Open Meetings. What follows must be read with two major caveats in mind:

1) The status of state law today is blurred by an impressive amount of activity, in legislatures and out, resulting in frequent and extensive change.*

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*For example, since this paper was completed, New York enacted an Open Meetings law (May 29, 1974); at this writing the details of the law are not available; Arizona and Idaho revised their laws. The Idaho revision changed that state's "score" from 4 to 7. (See p. 4).

2) Open Meetings statutes (as is the case in all laws) are written in a style which inevitably requires interpretation.

For these reasons, readers should approach the data with the expectation that some changes could have occurred since this writing, and that interpretations are those of the writer and may not coincide with others' interpretations.

It is not the intent here to provide a set of comprehensive guidelines for reporters or public in individual states. The responsibility for verification and clarification must rest with those whose need to know is specific or in a given state. What follows is an overview, with some discussion of principles and examples from states' laws to illustrate the points.

The centerfold presents a table summarizing the principal characteristics of states' laws on Open Meetings as they were known or inferred to be at the time of writing. There are almost certainly errors in the table. Readers who detect such errors would help future writers in this field, if they would inform the writer or publisher and provide clarifying documentation.

I. THE METHOD

Two questionnaires were used to gather the basic data:

1) A request was sent to state legislative reference services in the 50 states asking for copies of current Open

Meetings laws, reports of any test cases involving journalists, and reports of pending legislation on Open Meetings.

2) A request was sent to editorial officials on newspapers in the capital cities of the 50 states, asking for information about the functioning of Open Meetings laws, reports of test cases involving journalists, and expressions of attitudes toward the concept of Open Meetings.

Response from the state legislative reference services was good: 48 of 50 responded. Material from the Freedom of Information Center and Common Cause filled the gaps.

Responses were received from 33 of the 50 editors.

Once the data were in, the laws were analyzed in terms of:

1) Provisions for openness in various categories of governmental bodies.

2) Provisions for closed executive sessions.

3) Provisions for penalties for violation of the law.

4) Provisions for a mechanism (mandamus, injunction, etc.) to enforce compliance.

The data are accumulated in the centerfold.

II. CHARACTERISTICS OF A COMPREHENSIVE LAW

At the time of writing, all but three of the 50 states had some law -- specific or general -- on Open Meetings. Mississippi and West Virginia apparently had no provisions at all, in law, constitution or rules. New York,

with no law as such, did have rules of the House and Senate providing for open meetings of legislative committees.

There is no guarantee that presence of a state law will guarantee open government. But it is assumed that the chances of open government are improved if a state has a broad Open Meetings law with teeth.

In order to rank the states' laws along a "maximum openness"-"minimum openness" scale, we have isolated the characteristics that seem to assure "maximum openness." The "ideal" law, then, would:

1) Include a statement of public policy in support of openness.

2) Provide for an open legislature.

3) Provide for open legislative committees.

4) Provide for open meetings of state agencies of bodies.

5) Provide for open meetings of agencies and bodies of the political subdivisions of the state.

6) Provide for open County Boards.

7) Provide for open City Councils (or their equivalent).

8) Forbid closed executive sessions.

9) Provide legal recourse to halt secrecy.

10) Declare actions taken in meetings which violate the law to be null and void.

11) Provide for penalties for those who violate

the law.

Based on these characteristics, a state with an "ideal" law could score a maximum of 11 points (one point for each criterion) and a state with no law would score zero.

One state scored 11 points -- Tennessee, with a new law effective May 1, 1974.* Rhode Island and Maryland, with sketchy laws covering only state administrative agencies, scored one point each.

Substantial differences might exist between two states with the same score since some characteristics have more value for openness than others. However, no attempt was made in this paper to weight the various criteria.

For example, Colorado and Arizona both score 10. There is a difference, perhaps substantive, in that Colorado forbids executive sessions but provides for no penalties, while Arizona provides for penalties but allows executive sessions. The scoring technique blurs the possible conclusion that one or the other is a "stronger" law.

Similarly, Minnesota, Kansas, and Maine all score 9, but again the missed points are for different factors.

---

*On May 6, 1974, a Chancery Court in Shelby County ruled that the law was "constitutionally invalid for vagueness." The ruling has been appealed to the Tennessee Supreme Court.

"COMPREHENSIVENESS" OF STATE OPEN MEETINGS LAWS

State	Score	State	Score
Tennessee	11	Texas	7
Arizona	10	Washington	7
Kentucky	10	Wisconsin	7
Colorado	10	Iowa	6
Kansas	9	Nevada	6
Maine	9	New Jersey	6
Minnesota	9	Oklahoma	6
Alaska	8	South Dakota	6
Arkansas	8	Wyoming	6
Florida	8	Alabama	5
New Mexico	8	North Dakota	5
North Carolina	8	Louisiana	5
Oregon	8	Massachusetts	5
South Carolina	8	Ohio	5
Utah	8	Pennsylvania	5
Vermont	8	Virginia	5
New Hampshire	7	Connecticut	4
California	7	Delaware	4
Georgia	7	Hawaii	4
Illinois	7	Idaho	4
Michigan	7	Indiana	4
Missouri	7	Maryland	1
Montana	7	Rhode Island	1
Nebraska	7		

It might be noted that of the seven states scoring 4 or 1, Connecticut, Indiana and Rhode Island have taken recent action in terms of enacting or amending their laws. For the others with these scores, the range of dates for the latest action is from 1953 to 1962. All of the states scoring 9, 10, or 11 took their latest action in the 1970's.

If scores of 9 and 10 are perceived as "most comprehensive," 8 as above average, 6 and 7 as average, 5 below average, and 4 or below as "least acceptable," then it would seem that most states' laws might be appropriately remedied to provide for more openness or more enforcement

potential.

III. EXPLANATION OF IDEAL CHARACTERISTICS

What follows is a series of short discussions of the 11 factors defined here as necessary for a comprehensive state Open Meetings law.

1. STATEMENT OF PUBLIC POLICY

It would seem appropriate and helpful for state legislatures to include (or amend to include) in their Open Meetings laws some statement establishing openness as public policy, and 22 states have done so. If nothing else, such a statement would provide the assumption that openness was the preferred status, shifting to those who close a meeting the burden of proving the need for closure.

California's phrasing, also used by other states, is quite detailed:

> Declaration of public policy. In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.
>
> The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (5:2 54950)

South Carolina's law provides another version of an inclusive statement:

> Public policy.--Whereas the commissions, committees, boards, councils and other governing and governmental bodies which administer the legislative and executive functions of this State and its political subdivisions exist solely to conduct the peoples' business, it is the public policy of this State that the hearings, deliberations and actions of said bodies be conducted openly. (143-318.1)

Wyoming, however, is rather off-hand about it:

> The various agencies of Wyoming exist to conduct public business. (159:9-692.10)

Regardless of the phrasing, the advantage of such a statement is that the legislature puts on permanent record its commitment to openness.

2. OPEN LEGISLATURES

It is assumed that most general meetings of most legislatures in the nation are open, regardless of whether there is specific provision in law. Proponents of openness, however, feel more comfortable when such sessions are open by law rather than by custom. Of the 47 states with Open Meetings laws, 22 provide, specifically or by implication, for open legislatures.

Alaska, for example, provides as follows:

> All meetings of a legislative body. . . of the state or any of its political subdivisions. . . are open to the public. . . . (312: 44.62.301)

The legislatures of some states, Ohio for example, are open under a constitutional provision, some others are open by custom. More than half the states would seem to need some action to tidy up their laws and codify what is probably customary behavior anyway--that is, that the

legislatures are open.

3. OPEN LEGISLATIVE COMMITTEES

If it is true that the bulk of the work of a legislature is carried out in its committees, openness would seem to be appropriate here as with the parent body.

Slightly more states open their legislative committees (23) than open the legislature (22). In some cases rules of the House and Senate supplement the Open Meetings law or, as in the case of New York, which has no law, such rules provide the only support for openness in the state.

It is still the case, however, that fewer than half the states provide for open legislative committees by law.

4, 5, 6 and 7. OPENNESS OF VARIOUS BODIES

The state legislatures and their committees were mentioned in sections 2 and 3 above. The remainder of the types of governmental bodies are lumped together here since there is openness in practically all the states, with 44 states providing for open meetings of non-legislative agencies at the county and city level, county boards, and city councils. Furthermore, all 47 states with Open Meetings laws open state-level non-legislative bodies.

There are exceptions throughout, especially in terms of judicial and quasi-judicial bodies, parole boards, and the like. But generally speaking the laws appear to provide ammunition for reporters and others seeking access to state

administrative bodies and county and local meetings.

In summary, most of the states with Open Meetings laws provide for access to non-legislative, non-judicial meetings; they provide enforcement procedures and penalties as often as not (though only six of the states include all three enforcement types in their laws); half have adopted statements of public policy in support of openness; few invalidate actions taken in violation of the law; and very few open executive sessions.

Tennessee's law might have become a model law, but court action recently blurred that situation.

8. OPEN EXECUTIVE SESSIONS

Florida, Minnesota, North Dakota (inferred), Tennessee, and (on the state level only) Colorado provide for open executive sessions.

The Colorado situation arises from the fact that two Open Meetings laws are in operation there, a basic 1962 law and a 1972 amendment. The basic law, which permits closed executive sessions for specific purposes, has been interpreted by the State Attorney General to apply to local bodies. The amendment, which forbids closed executive sessions, has been interpreted to apply to state-level bodies (including the legislature and its committees.)

Minnesota's new law, effective May 1, 1974, says:

> Except as otherwise expressly provided by statute, all meetings, including executive

sessions. . . shall be open. . . ." (471.705 MS)

Colorado (at the state level) and Minnesota are relatively clear, but the other three states are included in this category because their statutes would appear to imply that closed meetings of any kind are illegal. For example, Tennessee's new law, also effective May 1, 1974, says:

> All meetings of any governing body are declared to be public meetings. . . .
>
> "Meeting" is defined as:
>
> The convening of a governing body of a public body for which a quorum is required to make a decision or to deliberate toward a decision on any matter. (From House Bill 1486)
>
> And North Dakota's law says:
>
> All meetings of two or more members of any. . . committee (etc.). . . are declared to be public meetings open to the public at all times. . . . (1973 - 13.1)

Florida's inclusion here is based on an interpretation. It may not be appropriately listed here.

All other states allow closed executive sessions, some for restricted purposes, some in general. It should be noted, however, that 15 of the states' laws provide that no <u>final</u> action may be taken in closed sessions.

Alabama's law, unamended since 1915, appears to have the longevity record. It is specific in <u>forbidding</u> executive sessions by a variety of agencies, then adds:

> . . . except that executive or secret sessions may be held by any of the above named boards or commissions when the character or good name of a woman or

man is involved. (393. 5254)

One respondent noted that boards and commissions have found the exception to be a useful device for circumventing the spirit of the law.

Alaska's law specifies that:

> The following excepted subjects may be discussed in an executive session:
> 1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
> 2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
> 3) matters which by law, municipal charter, or ordinance are required to be confidential. (44.62.301 (c) 1-3)

Arizona's law allows three sorts of closed executive sessions (state Senate and committees and subcommittees of the legislature; bodies considering employment or dismissal of employees; and bodies required by federal regulation to meet in executive session), but Arizona also sets limits by adding:

> 1. . . . such sessions shall not be used to defeat the purposes of the provisions of this article.
> 2. . . . (no) official action shall be finally approved at such executive session.
> 3. . . . executive sessions may be called only by a majority vote of such bodies or agencies. (38-431.02 A. 1-3)

Journalists might find appropriate the phrasing in Oregon's law, which provides for a broad range of executive sessions, but adds:

> Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information

> as may be agreed to by the governing body and the representatives of the news media prior to such executive sessions. (1933:172.6 (4))

9. LEGAL RECOURSE TO HALT SECRECY

It is implicit in all law that some recourse is available to counteract violations. In the case of open meetings, the principal purpose of the mechanism would be to force illegally closed meetings to be opened.

Of the 47 states with laws, 21 provide redress procedures. Of these, seven provide for a general "appeal to the court." The rest specifically suggest a request for a writ of mandamus, an injunction, or both. There still remain 26 states with laws with no specific recommendation for enforcement, but in some of these, at least, test cases have occurred, which would support the notion that judicial relief is possible even if the procedure is not spelled out in a state's law. For our purposes, specific mention is considerably more reassuring than a theoretical possibility.

10. ACTIONS TAKEN CONTRARY TO LAW TO BE NULL AND VOID

This factor and two others (penalties for noncompliance and enforcement mechanisms) provide the teeth to give meaning to the Open Meetings laws. The phrasing varies, but 14 states declare actions taken contrary to the laws to be null and void in one way or another.

Georgia, for example, says:

> No resolution, rule, regulation or formal action shall be binding except as taken or made at (public) meetings. (23-802, 23-9912 GCA, Ga L 1972, p. 576)

SUMMARY OF OPEN MEETINGS LAWS

	Date of latest action	Includes statement of public policy	Provides for open legisla-ture	Provides for open legislative committees	Opens state agencies	Ope cou loc age
Alabama	1915				yes	y
Alaska	1972	yes	yes	yes	yes	y
Arizona	1974	yes	yes	yes	yes	y
Arkansas	1967	yes			yes	y
California	1974	yes			yes	y
Colorado	1974	yes	yes	yes	yes	y
Connecticut	1971				yes	y
Delaware	1955				yes	y
Florida	1967				yes	y
Georgia	1972		yes[o]	yes[o]	yes	y
Hawaii	1959				yes	y
Idaho	1961				yes	y
Illinois	1973	yes			yes	y
Indiana	1971	yes			yes	y
Iowa	1967				yes	y
Kansas	1972	yes	yes	yes	yes	y
Kentucky	1974	yes	yes[d]	yes[h]	yes	y
Louisiana	1972				yes	y
Maine	1973	yes	yes	yes	yes	y
Maryland	1954				yes	
Massachusetts	1970				yes	y
Michigan	1968		yes[c]	yes[d]	yes	y
Minnesota	1973[e]		yes[d]	yes[d]	yes	y
Mississippi	no law					
Missouri	1973		yes	yes	yes	y
Montana	1963	yes	yes	yes	yes	y
Nebraska	1972	yes			yes	y
Nevada	1960	yes			yes	y
New Hampshire	1973		yes	yes	yes	y
New Jersey	1974[f]	yes		yes[g]	yes	
New Mexico	1974			yes[h]	yes	y
New York	no law			[i]		
North Carolina	1971	yes	yes	yes	yes	y
North Dakota	1957[j]		[d]	[d]	yes	y
Ohio	1961		yes[c]		yes	y
Oklahoma	1959				yes	y
Oregon	1973	yes	yes	yes	yes	y
Pennsylvania	1959[k]				yes	y
Rhode Island	1974[l]				yes	
South Carolina	1972	yes	yes	yes	yes	y
South Dakota	1965		yes[d]	yes[m]	yes	y
Tennessee	1974[q]	yes	yes	yes	yes	y
Texas	1973[n]		yes	yes	yes	y
Utah	1953	yes	yes	yes	yes	y
Vermont	1973	yes	yes	yes	yes	y
Virginia	1974				yes	y
Washington	1973	yes			yes	y
West Virginia	no law					
Wisconsin	1959		yes	yes	yes	y
Wyoming	1973	yes			yes	y

*See page 30 for alphabetical explanations.

nu nty al ncies	Opens county boards	Opens city councils	Forbids closed exec. sessions	Legal recourse to halt secrecy	Actions in meetings in violation void	Provides penalties for violations	"Score"
es	yes	yes				yes	5
es	yes	yes			yes		8
es	yes	yes		yes	yes	yes	10
es	yes	yes		yes	yes	yes	8
es	yes	yes		yes		yes	7
es	yes	yes	yes[a]	yes	yes		10
es	yes	yes					4
es	yes	yes					4
es	yes	yes	yes	yes	yes	yes	8
es	yes	yes		yes	yes	yes	9
es	yes	yes					4
es	yes	yes					4
es	yes	yes		yes		yes	7
es						yes	4
es	yes	yes		yes		yes	6
es	yes	yes			yes	yes	9
es	yes	yes		yes	yes[p]	yes	10
es	yes	yes				yes	5
es	yes	yes	[b]	yes		yes	9
							1
es	yes	yes		yes			5
es	yes	yes		yes			7
es	yes	yes	yes	yes[d]		yes	9
							no law
es	yes	yes		yes			7
es	yes	yes					7
es	yes	yes			yes	yes	7
es	yes	yes				yes	6
es	yes	yes				yes	7
	yes[d]	yes[d]			yes		6
es	yes	yes		yes	yes	yes	8
							no law
es	yes	yes		yes			8
es	yes	yes	yes[d]				5
es	yes	yes					5
es	yes	yes			yes	yes	6
es	yes	yes		yes			8
es	yes	yes				yes	5
							1
es	yes	yes		yes			8
es	yes	yes				[n]	6
es	yes	yes	yes	yes	yes	yes	11
es	yes	yes				yes	7
es	yes	yes				yes	7
es	yes	yes				yes	8
es	yes	yes		yes			5
es	yes	yes		yes		yes	7
							no law
es	yes	yes				yes	7
es	yes	yes			yes		6

New Mexico's 1974 law provides that no actions shall be valid unless taken at a public meeting, but adds a sentence noting that:

> Every (such action) of any board, commission, committee or other policy-making body shall be presumed to have been taken or made at a public meeting. . . . (Ch. 91 at 296)

Whether the latter section is designed to shift the burden of proof to those who claim actions were taken in secret or whether some other interpretation is to be made is not clear.

Wyoming's law, however, is clear:

> Action taken at a meeting not in conformity with this act is null and void. (159:9-692.12 (a))

11. PENALTIES FOR NON-COMPLIANCE

The third of the three procedures for enforcement of Open Meetings laws is inclusion of specific penalties to be imposed on those who fail to comply. Here 26 states have more or less specific penalties as part of their laws. The least precise is that in Tennessee's new law, which combines an enforcement procedure and a penalty reference:

> The Circuit Courts, Chancery Courts and other courts which have equity jurisdiction, shall have jurisdiction to issue injunctions, impose penalties, and otherwise enforce the purposes of this act upon application of any citizen of this state. (Emphasis added.) (House Bill 1486-6 (a))*

New Hampshire's 1973 amendment provides that any body or agency which fails to comply with the Open Meetings law

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*See note on unconstitutionality on p. 4.

"shall be liable for reasonable attorney's fees and costs incurred in making the information available or the proceedings open to the public. . . ." (RSA 91-A:8)

Twenty-four other states provide either that violation will be treated as a misdemeanor or spell out fine and/or imprisonment limits.

No consistent pattern is found among the states' laws. For example, Alabama's range on fines is from $10 to $100; Indiana's is from $50 to $500; Nebraska's fine is "not more than $25"; and Pennsylvania smacks the wrist with a range from $10 to $25 and costs.

On imprisonment, the general phrase is "not more than 30 days," but Maine's maximum is one year and Texas' is from one to six months.

Minnesota further provides for dismissal of an offending official after a third violation.

In about half the states, no penalty is mentioned and this sort of incentive to openness is therefore unavailable.

IV. TWO "MODEL LAWS"

Common Cause and the Society of Professional Journalists, Sigma Delta Chi, are two national bodies active in support of Open Meetings laws. Both have developed "model" laws, but neither has been enacted in its entirety in any state.

Of the two, that of Common Cause is the stronger

(scoring 10 on our 11-point scale, the factor missing being open executive sessions).

The SPJ, SDX "model" law scores 5 by not providing for any of the three enforcement mechanisms, allowing closed legislatures and legislative committees, and by not providing for a statement of public policy. It should be noted that the SPJ, SDX model law is not intended to be inclusive, but rather that organization expects the model law to be used solely as a starting point, recognizing the inevitability of changes in the legislative process.

Copies of the two model laws, used with permission, may be found in the Appendix.

(A useful Common Cause book on a variety of matters, including Open Meetings laws, is Money and Secrecy, by Lawrence Gilson (New York: Praeger Publishers, 1972, 293 pp., paperback, $2.95). Among other things, the book provides a state-by-state look at Open Meetings laws. Though published in 1972 it is, because of the extensive action in this field, somewhat out of date, but still useful.)

V. THE EDITORS' RESPONSES

It was noted earlier that 33 of 50 editorial officials,in 33 state capital cities, replied.

Of the 33, all but two favored Open Meetings laws. The two negative responses were from editors who felt that laws create loopholes and things are therefore better without law.

The prevailing view, however, was favorable, but 13 of the editors favoring legislation agreed that "certain" exceptions were probably desirable. The rest favored strong laws and preferred no exceptions.

Two of the editors were not aware that their states had Open Meetings laws, and one other was not aware that there had been test cases involving journalists in his state, cases which the state legislative reference service reported.

Conversely, four editors documented test cases involving journalists in states where the legislative reference service reported that there had been no such cases.

Perhaps more significant than actual test cases is the effectiveness of the threat of court action, reported by 13 of the editors. As an aid to reporters, the North Carolina Press Association, for example, provides a wallet-size card on which the state's Open Meetings law is printed. Arkansas' Little Rock Professional Chapter of SPJ, SDX, prepared an explanatory booklet on their law for journalists. Groups in South Carolina and Virginia, among others, have done the same sort of thing. These sorts of documents have given reporters a useful weapon to open illegally closed meetings without the necessity for court involvement. Cases have occurred, however. Editors and/or state legislative services in eight states reported cases, all of which were successful in opening meetings (and all of which occurred in states whose laws spell out the enforcement procedure).

VI. CONCLUSIONS

The writer has approached the subject of Open Meetings under the assumptions that:

1. Openness is desirable in a democracy.

2. The greater the openness provided by law the greater the chances of open government actually occurring.

3. The best law is weakened if it has no enforcement procedures.

With this in mind, eleven "desirable" characteristics of a state's Open Meetings law were proposed and the laws of the 47 states with such laws were examined and points were given for each characteristic represented.

Subjectively, it must be concluded that the status of Open Meetings laws in most of the states is marginal. Very few states, by law at least, go beyond minimal provisions for openness and three have no laws at all.

There is, however, extensive action going on. Twenty-six states have taken some legislative action in the 1970's and there are many reports of other action ahead. Journalists, as surrogates for the public, would seem to be sufficiently involved in the need for openness to act, and join others in acting, for improved legislative support of new or amended Open Meetings laws. The rewards, for press and public, would be worth the effort.

APPENDIX

The model laws of Common Cause and the Society of Professional Journalists, Sigma Delta Chi, follow:

Society of Professional Journalists, Sigma Delta Chi

A BILL
TO BE ENTITLED

AN ACT REQUIRING ALL MEETINGS OF THE GOVERNING BODIES OF MUNICIPALITIES, COUNTIES, BOARDS OF PUBLIC INSTRUCTION, BOARDS OF COUNTY COMMISSIONERS, AND OTHER BOARDS, BUREAUS. COMMISSIONS OR ORGANIZATIONS, EXCEPT GRAND JURIES, SUPPORTED IN WHOLE OR IN PART BY PUBLIC FUNDS OR EXPENDING PUBLIC FUNDS, TO BE PUBLIC MEETINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____.

Section 1. All meetings of the governing body of all municipalities located within the State of _____, Boards of County Commissioners of the counties in the State of_____, Boards of Public Instruction of the counties in the State of_____, and all other boards, bureaus, commissions or organizations in the State of _____, excepting grand juries, supported wholly or in part by public funds or expending public funds shall be public meetings.

Section 2. Any person or persons violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding ____Dollars or by imprisonment in the county jail for a period not exceeding_____, or by both such fine and imprisonment.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. If any provision of this act or its application to any person, board, bureau, commission or organization shall be held unconstitutional, such decision shall not affect the constitutionality of any other portion of the act or its application to any other municipality, board, bureau, commission or organization.

Section 5. This act shall become law upon its passage and approval by the governor or become a law without such approval.

Common Cause

AN ACT REQUIRING OPEN MEETINGS OF PUBLIC BODIES

Section 1. PUBLIC POLICY. It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, this act shall be construed liberally.

Section 2. DEFINITIONS. As used in this act:

(a) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(b) "Public body" means any administrative, advisory, executive, or legislative body of the state or local political subdivision of the state, or any other entity created by law, that expends or disburses or is supported in whole or in part by tax revenue or that advises or makes recommendations to any entity that expends or disburses or is supported in whole or in part by tax revenue, including but not limited to any board, commission, committee, subcommittee, or other subsidiary thereof.

(c) "Quorum," unless otherwise defined by applicable law,

means a simple majority of the constituent membership of a public body.

Section 3. OPEN MEETINGS. Every meeting of all public bodies shall be open to the public unless closed pursuant to sections 4 and 5 of this act.

Section 4. CLOSED MEETINGS. A public body may hold a meeting closed to the public upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to section 6 of this act, of two thirds of its constituent members. A meeting closed to the public shall be limited to matters allowed to be exempted from discussion at open meetings by section 5 of this act. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting, by a citation to a subsection of section 5 of this act, shall be recorded and entered into the minutes of the meeting. Nothing in this section or section 5 of this act, shall be construed to require that any meeting be closed to the public.

Section 5. EXCEPTIONS. (a) A public body may hold a meeting closed to the public pursuant to section 4 of this act for one or more of the following purposes:

(1) discussion of the character, as opposed to the professional competence, or physical or mental health of a single individual provided that such individual may require that such discussion be held at an open meeting; and provided that nothing in this subsection shall permit a meeting

closed to the public for discussion of the appointment of a person to a public body;

(2) strategy sessions with respect to collective bargaining or litigation, when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;

(3) discussion regarding the deployment of security personnel or devices; and

(4) investigative proceedings regarding allegations of criminal misconduct.

(b) This act shall not apply to any chance meeting, or a social meeting at which matters relating to official business are not discussed. No chance meeting, social meeting, or electronic communication shall be used in circumvention of the spirit or requirements of this act to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.

(c) This act shall not apply to judicial proceedings, but shall apply to a court or other judicial body while exercising rule-making authority or while deliberating or deciding upon the issuance of administrative orders.

(d) This act shall not prohibit the removal of any person or persons who willfully disrupt a meeting to the extent that orderly conduct of the meeting is seriously compromised.

Section 6. NOTICE. (a) All public bodies shall give written public notice of their regular meetings at the

beginning of each calendar year. The notice shall include the dates, times, and places of such meetings. (b) All public bodies shall give supplemental written public notice of any regular, special, or rescheduled meeting no later than 72 hours before the meeting. The notice shall include the agenda, date, time, and place of the meeting.

(c) Written public notice shall include, but need not be limited to:

(1) posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held, and in at least three other prominent places within the governmental unit; and

(2) mailing a copy of the notice to any person who requests notice of such meetings; any such person shall be given notice of all special or rescheduled meetings in the same manner as is given to members of the public body.

Section 7. MINUTES. (a) All public bodies shall keep written minutes of all of their meetings. Such meetings shall include, but need not be limited to:

(1) the date, time and place of the meeting;

(2) the members of the public body recorded as either present or absent;

(3) the substance of all matters proposed, discussed, or decided, and, at the request of any member, a record, by individual member, of any votes taken; and

(4) any other information that any member of the public body requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within a reasonable time after the meeting except where such disclosure would be inconsistent with sections 4 and 5 of this act.

(c) All or any part of a meeting of a public body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction except when a meeting is closed pursuant to sections 4 and 5 of this act; provided that in so recording there is no active interference with the conduct of the meeting.

Section 8. VOIDABILITY. Any final action taken in violation of sections 3 and 6 of this act shall be voidable by a court of competent jurisdiction. A suit to void any final action must be commenced within 90 days of the action.

Section 9. ENFORCEMENT. (a) The Attorney General and the public prosecutors of competent jurisdiction shall enforce the provisions of this act.

(b) Any person denied the rights conferred by this act may commence a suit in a court of competent jurisdiction for the county or city in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of this act or to determine the applicability of this act to discussions or decisions of the public body. The court may

order payment of reasonable attorney fees and court costs to a successful plaintiff in a suit brought under this section.

Section 10. PENALTIES. Any person knowingly violating any provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $500 or imprisoned not more than six months, or be both fined and imprisoned.

Section 11. CONFLICT OF LAW. If the provisions of this act conflict with any other statute, ordinance, regulation, or rule, the provisions of this act shall control.

Section 12. SEVERABILITY. If any provision of this act, or the application of this act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this act.

Section 13. EFFECTIVE DATE. This act shall take effect 30 days after enactment into law.

FOOTNOTES FOR CENTERFOLD TABLE

a. State level only; executive sessions are allowed at the political subdivision under the first of Colorado's two Open Meetings laws.

b. Section of the law which allows executive sessions specifically excludes legislative committees.

c. Constitutional provision.

d. Inferred.

e. Effective May 1, 1974.

f. Based on inadequate data -- neither the legislative reference service nor the newspaper person responded.

g. Opened by a rule passed January 31, 1974.

h. Standing committees only.

i. Rules open committees of the House and Senate to news media and the public, though there is no law as such.

j. Not totally clear from available data. A referendum is scheduled for September, 1974, which should clarify. At present all data are inferred from sketchy law.

k. Seven bills were being considered by the legislature. At the time of writing no formal action was known to have been taken.

l. There is law dealing with "administrative procedures," but no Open Meetings law as such.

m. Under House Joint Rules.

n. Effective January 1, 1974.

o. A test case apparently opened the Legislature and its Committees following a judge's interpretation of the state's law. Documentation not available at time of writing.

p. Law is phrased: "Any rule, resolution, regulation, ordinance or other formal action of a public agency without substantial compliance of the requirements of Sections 2, 3, 4, and 5 of this Act shall be voidable by a Court of competent jurisdiction. A certificate by the Clerk or secretary of said public agency at said

meeting that the requirements of Sections 2, 3, 4, and 5 of this Act were complied with shall be prima facie and admissive in any Court of competent jurisdiction." From House Bill 100. (61:6KRS)

q. A ruling of the Chancery Court of Shelby County, Tenn., on May 6, 1974 held the Tennessee Open Meetings Law to be "constitutionally invalid for vagueness" (No. 78995-2R.D., 5/6/74). An appeal is pending.

r. It is understood that a recent amendment to the law provides a penalty for non-compliance, but it is not verified at this time and hence is not included.